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In The

SUPREME COURT OF THE UNITED STATES

_____ Term, 1947

No. 1093

William Chanady,
Petitioner,
v.
Detroit Sheet Metal Works, A Michigan Corporation,
Respondent.

ANSWER OF RESPONDENT TO PETITION FOR WRIT OF CERTIORARI AND BRIEF IN OPPOSITION THERETO

Ernest W Hotchkiss

HUMPHREYS SPRINGSTUN,
1015 Majestic Building,
Detroit 26, Michigan,
Attorneys for Respondent.

HORNE, INC., 170 E. LARNED ST., DETROIT, MICH.

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Respondent respectfully shows:

COUNTER-STATEMENT OF MATTER INVOLVED

(Figures in parentheses refer to pages of the printed record, except as the context clearly indicates otherwise.)

The alleged "question" sought to be presented by petitioner herein was not raised either in the trial of this

case in District Court or in the briefs and records in Appellate Court. Not having been hitherto raised herein, it is obviously an afterthought, since no petition for rehearing was filed with the Appellate Court.

In comments upon the purposes of the Fair Labor Standards Act, the petitioner herein tries to indicate that this Act has more applicability to "laborers" than to other "employees." Such is not the case. The plain language of the Act is comprehensive of all employees, with no special preferences for manual laborers or any other classification of employee.

Consequently, even if it were well founded in fact, the petitioner's claim to special consideration because of "manual labor" would be without merit.

As a matter of fact, however, the petitioner was not, as he erroneously alleges in this petition, employed "exclusively at manual labor, having no voice in business policy or management. On the contrary, in his own testimony, he stated (R. 17), "I was to do the hiring and firing out in the paint shop of the employees there, and I did do it. I kept the time of the employees there, and I turned in the time cards to Detroit Sheet Metal Works each week for each one of the employees * * * and sometimes I signed the cards." Also, in response to the question (R. 18), "Now in addition to hiring and firing all of the employees at that particular plant, you likewise had, as a part of your duties, the seeing to it that the plant operated in a proper and efficient manner in that building, didn't you?", he answered, "That is right." Likewise (R. 19), in response to the next question, "And in so doing, it was necessary for you to use your own judgment and discretion as to whom to put on any particular piece of work,

and how to route the work every day to get it out, wasn't it?", he replied, "That is right." Also, in response to the next three questions (R. 18), he answered the same way, namely:

> "Q. You did exercise that judgment and discretion, didn't you?
> A. That was my business.
> Q. Yes. You managed that plant to the best of your ability, didn't you?
> A. That is right.
> Q. That was recognized as not being a part of the Detroit Sheet Metal Works in its actual plant at 1300 Oakman Boulevard (but) as a separate building or separate equipment, wasn't it?
> A. That is right."

Again (R. 20) when asked, "You used your authority to tell each of these employees what hours he should work, didn't you?", he replied, "Yes; and what he should work on."

Therefore, the recorded facts of petitioner's own testimony flatly contradict his present contention that he worked only at manual labor.

COUNTER-SUMMARY OF EVIDENCE

On January 15, 1946, without previous notice or complaint to respondent, and more than eight months after termination of his employment, the petitioner filed suit (R. 2) claiming $2471.62 plus penalty damages and attorneys fees from respondent for 1014 hours of alleged overtime from October 13, 1944, through May 12, 1945. He had been hired at a flat salary of $65.00 per week to obtain a building, set up a paint shop, equip it, hire labor for it, and operate it. This he did, in a building 9 miles away from respondent's plant, and was paid on said flat salary basis during the entire time, while all other employees there were paid on an hourly basis.

As a further incident of his employment by respondent, the petitioner also was to receive one-half of the net profits from the operation by him of this paint shop; and in February of 1945, he did receive and accept $500.00 as his half of the profits for the period from October 31 to December 31, 1944 (R. 22) and receipted therefor in a writing (R. 21-22) which indicated the continuance of the same arrangement for 1945, in which year the net profits of this paint shop were $1080.00 and petitioner was tendered (R. 25-26) $540.00 as his share in December of 1945, and again in open court during the trial of this case (R. 27), but refused same.

Petitioner never turned in any time cards for himself and no arrangement was ever made between petitioner and respondent for any compensation for petitioner, other than the flat $65.00 weekly salary and one-half of the profits, and at the trial petitioner so admitted (R. 31) with the words, "That I never questioned"; and when the court

asked him, "Witness, how did you expect they were going to make up your payroll for overtime if you did not turn in time cards?" (R. 31) he replied, "Well, Your Honor, I never thought about that." Plainly, petitioner's then claim for alleged overtime was the same type of afterthought as is his present claim before this court.

Petitioner admitted (R. 34) that the burden of proving alleged overtime was upon him, and the District Judge, before whom this case was tried without a jury, found that he had failed so to prove and decided against him, upon motion made by respondent at the close of petitioner's case without any testimony whatever being offered by respondent.

FINDINGS OF DISTRICT COURT

The findings of fact filed by the court (R. 7-8) were in conformity with the aforementioned testimony, and his conclusions of law followed naturally and automatically in accordance therewith. The learned judge found as a matter of fact that in August, 1944, respondent advertised for "A manager to supervise the installation and operation of a paint shop" * * * and that petitioner "answered the advertisement and was employed for such position at a salary of $65.00 per week, with an arrangement for a share in the profits * * * of the paint shop"; that petitioner obtained a building nine miles from respondent's plant, supervised and directed its installations, outfitting and equipment, operated it until the summer of 1945, and then supervised and directed its dismantling and closing. The court also found, and, again, solely on petitioner's own testimony, that he managed and supervised the operation

of the paint shop during his entire employment, "had complete charge of the shop and exercised wide discretionary powers," deciding "when, how and by whom all operations were conducted at the paint shop," organizing, directing and instructing "all other employees as to their duties and work," deciding "how many employees were to work," what duties they were to perform, and being "responsible to no one other than defendant's officers who were located at the main plant." The court also found that as to petitioner's own time that "no official records of his own time were kept or turned in to defendant"; that petitioner "decided when and the quantity and kind of supplies and equipment to requisition for the paint shop * * * interviewed prospective employees," and that particular weight was given to his suggestions as to hiring or firing and as to advancement or promotion "or any other change of status of other employees of the paint shop," which was "a physically separated branch establishment of the defendant, and plaintiff was in sole charge thereof."

The court's conclusions of law flowed naturally from these findings of fact; and, since such determination of fact was the only real question before the Appellate Court, its affirmation of District Judge Lederle merely stated "that the findings of fact of the District Judge are fully supported by the evidence," and that "his conclusions of law are correct."

QUESTIONS PRESENTED

I.

Both questions presented on page 7 of plaintiff's petition are erroneous and not in accordance with the record of either the testimony or the court's findings of fact. Neither shows that petitioner "worked exclusively at manual labor," but just the opposite, as previously hereinbefore set forth. But, even if petitioner had worked exclusively at manual labor, under his compensation arrangement of a flat salary of $65.00 per week, plus half of the profits, this would be of his own choice for the purpose of increasing the profits in which he was to share.

II.

The second question falls with the first, because, since petitioner's status was not that of merely a manual laborer, nor was he compensated merely as a manual laborer. Hence, the physically separated branch establishment over which he had charge and supervision, had nothing to do with "changing" his status, because his status was set and determined before he ever opened up and started operating this paint shop, and it never changed.

III.

Therefore, the only real question now before this court is not whether the Sixth Circuit Court of Appeals has decided an important question of Federal law which has not been, but should be, settled by the Supreme Court, because nothing of the sort was done by the Appellate Court; but the real question is whether the Supreme Court should attempt to review findings of fact herein to which the law applies automatically.

WHY THE WRIT SHOULD NOT BE ALLOWED

The reasons presented on pages 7 and 8 of this petition are not in conformity with the facts of the record herein.

The Circuit Court of Appeals did not decide an important question of Federal law that should be settled by the Supreme Court. It merely decided that the findings of fact of the District Judge were "fully supported by the evidence," and that, therefore, under the undisputed facts of plaintiff's sole testimony he did not come within the provisions of the Fair Labor Standards Act.

No constitutional question is involved. Indeed, no question whatever is involved except whether or not the District Judge found the facts correctly from plaintiff's uncontradicted testimony.

Neither is it correct that "this is the first case in which any court has held that a laborer * * * is exempt from the protection of the Act * * *," because this petitioner was not found to be a "laborer," but was found to be one who was specially hired on flat salary plus half of plant profits to find and equip a building, set up a plant, operate it, hire, supervise, direct, fire employees, and manage the plant generally.

Nor does petitioner's term, "geographically separated" have any meaning. It made no diffference whether this plant was 9 miles or 9 feet from the respondent's plant. The question was as to whether it was "a physically separated branch establishment," which, again, on plaintiff's own testimony, the court so found and determined it to be.

Likewise, petitioner's references to "working foremen and working supervisors" is wholly without point or merit in this case, because they do not do what petitioner did, nor do they ever have the power so to do. If they did, they would be executives or administrators by virtue of their duties, powers and responsibilities.

Wherefore, respondent prays that this petition be denied.

Respectfully submitted,

HUMPHREYS SPRINGSTUN,
Attorney for Respondent.

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Detroit 26, Michigan.

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BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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I.

The Circuit Court of Appeals has not decided "an important question of Federal law which has not been, but should be, decided by this court." Hence *Supreme Court 38 (5) (d)* has no applicability hereto.

II.

The Assignment of Error herein is not correct, because the decision of the Circuit Court of Appeals was merely that the findings of fact of the District Judge sitting without a jury were "fully supported by the evidence"; and the findings of the trial judge must be accepted on appeal if supported by substantial evidence. Whether an employee is exempt under the Fair Labor Standards Act is purely a factual question, and for the jury, or the trial judge sitting without a jury, to determine. This is especially true where the evidence on the question of plaintiff's exemption as a bona fide executive employee was unequivocal. And "except in a strong case, the Supreme Court of the United States will not set aside findings of fact in which both a Federal District Court and a Circuit Court of Appeals have concurred."

Goodyear Co. v. Ray-O-Vac Co., 321 U. S. 275, Syl. 1;
D. of C. v. Pace, 320 U. S. 698;
Williams Mfg. Co. v. United, etc. Corp., 316 U. S. 364;
Tennessee Coal, Iron & R. Co. v. Muscoda Local No. 123, 321 U. S. 590 at 602, 604 and 605.

ARGUMENT

In his argument, the petitioner again claims that he was engaged "exclusively in manual labor," and that "he worked one hundred per cent of his time at manual labor." This is not an accurate statement of the petitioner's testimony as is evidenced by the direct quotations therefrom which have been previously quoted herein. Nor do pages 34 or 60 of the record herein, as indicated by petitioner in his last paragraph on page 13, substantiate this claim. Page 60 of the record is merely colloquy between court and counsel. Page 34 of the record contains a motion by defendant's counsel "to dismiss this case because on his (plaintiff's) own admission under cross-examination it does not come within the statute"; and, also, the statement of plaintiff himself that he "looked after everything that was to be looked after for successful operation of the plant, such as keeping the materials on hand." Plaintiff was, on re-direct examination, asked the question, "How much manual labor did you do?", to which he replied, "100 per cent." But a fair interpretation of this answer at this point in the record is that plaintiff was merely affirming that whatever actual "labor" he did, as differentiated from the direction, management and supervision he did, was 100% "manual," as differentiated from skilled, semi-skilled, handicraft, scientific, clerical, artistic, technical and other forms of labor not involving as much physical effort.

Petitioner, also, for the first time, now attempts to raise a question as to the propriety of the Administrator's definitions and regulations regarding sub-sections (B),

(C) and (D) of Section 541.1, and to propose the amazing proposition that the Act was designed to protect "manual laborers" instead of "white collar" workers. Such is not the case. The Act applies to all workers, regardless of the type of work they do or the clothes they wear, and regardless of whether they do merely manual or common labor or are engaged in any of the semi-skilled or highly skilled trades or operations. There is no preference under the Act for a worker who digs with pick and shovel over a worker who makes moulds, tools, dies, sits on a bench, occasionally turns a knob or lever on a machine, or engages in highly skilled handling of technical, scientific, precision instruments.

Neither the *Chrysler case* nor the *Spielman case* are applicable hereto. They are State cases dealing with unemployment compensation claims wherein the situation is vastly different both as to workmen and establishments. Nor is there any merit in the point that the paint shop, which was leased, set up, equipped, managed, staffed and operated by the petitioner, was in operation only from October, 1944 to June of 1945. If this indicates anything at all, it indicates that it was most definitely "a physically separated branch establishment." If lack of permanence had any significance, hundreds of the plants that operated only during the war would be beyond the pale. The quotation from *Walling, Adm. v. Wolferman,* is no wise in point here.

Nor was petitioner (Petition pg. 15) "compelled" to work in a paint shop in a garage "nine miles distant from the main plant." He sought the job in answer to a newspaper advertisement for a man who could and would set up and manage and operate such a shop on a flat $65.00 per week salary plus half of the profits from the shop, so

that the accounts of which shop, therefore, had to be kept in such a fashion that the profits from this shop could be set up and determined separately from the profits of the corporation itself at its main plant.

CONCLUSION

Since the decisions in this case do not classify a manual laborer as an executive; and since the decisions herein did not make any narrow construction of the Act; and since there is involved here only a question of fact, which, on petitioner's own testimony, solely, has been decided against him by a Federal District Court and concurred in by a Circuit Court of Appeals; no question of merit is presented to this Honorable Court and the Petition for Certiorari should be denied.

Respectfully submitted,

HUMPHREYS SPRINGSTUN,
Attorney for Respondent.

Business Address:
1015 Majestic Building,
Detroit 26, Michigan.